

**CITY OF SHOREVIEW
MINUTES
REGULAR CITY COUNCIL MEETING
July 5, 2011**

CALL TO ORDER

Pursuant to due call and notice thereof, a regular meeting of the Shoreview City Council was called to order by Mayor Martin on July 5, 2011, at 7:00 p.m.

PLEDGE OF ALLEGIANCE

The meeting opened with the Pledge of Allegiance to the flag.

ROLL CALL

The following members were present: Mayor Martin; Councilmembers Huffman, Quigley, and Wickstrom.

Councilmember Withhart was absent.

APPROVAL OF AGENDA

MOTION: by Councilmember Wickstrom, seconded by Councilmember Huffman to approve the July 5, 2011 agenda as amended.

VOTE: Ayes - 4 Nays - 0

PROCLAMATIONS AND RECOGNITIONS

Mayor Martin introduced the City's new representative to the Metropolitan Council, John Doan, appointed by the Governor.

Mr. Doan stated that he lives in Blaine. The Metropolitan Council has planning responsibilities for the metro region, as well as waste water treatment and transit. The district he serves extends from Blaine in the north along the I-35W corridor on both sides to include Roseville, Falcon Heights and Lauderdale to the south, east to North Oaks and west to New Brighton. The district is in both Ramsey and Anoka Counties. He sees his job as working to advance the region. He is participating in a series of retreats with Metropolitan Council members to develop a mission and vision.

CITIZEN COMMENTS

Mr. Tom Lemke, 5577 Schutta Road, stated that he is disappointed with the City Council in not taking leadership in regard to the stadium issue. The stadium affects many cities, and no one has taken leadership. Shoreview has perhaps even bigger stakes than Arden Hills with the amount of property in Shoreview that surrounds the arsenal property. The arsenal property is in a blighted condition and is negatively impacting his property far more than a stadium. There has been no major road improvement since the development of Highway 96, which was 10 years ago. The only way to improve traffic is for the arsenal property to be developed. If the stadium does not succeed, he would like to see all surrounding communities come together to make a plan for this property.

Mayor Martin stated that this issue is difficult because there is no official measure of how residents in the community feel about the stadium. Based on emails received, it would be more than one hundred in opposition and two in support. The Council is in contact with all officials, and she has participated in every information meeting scheduled, but the information provided is very slim.

Councilmember Huffman added that the Council does not know any more than what is published in the newspaper. There is no public dialogue.

Councilmember Wickstrom stated that Mn/DOT is currently working on a plan to improve the I-35W, Highway 10, County Road I triangle. Her concern is access from the stadium to County Road I and to Schutta Road. This would be a huge impact of traffic in the northern part of the City. It is very disappointing that the County has provided no information in response to the City's questions in a letter sent last February. If the City were to take a leadership role, she would oppose the stadium.

COUNCIL COMMENTS**Mayor Martin:**

The Metropolitan Council is holding transit hearings on changes in service on July 6 and 7. More information about the meetings is available on the Metropolitan Council website.

The County is holding household hazardous waste collection days on Fridays and Saturdays behind the Maintenance Center during the entire month of July for residents to get rid of materials that cannot be put in the regular garbage or recycling.

The Council is seeking nominations from the public for Citizen of the Year for 2011. Applications are on online and close September 2, 2011.

MOTION: by Councilmember Huffman, seconded by Councilmember Wickstrom to approve the June 6, 2011 City Council Meeting Minutes as submitted.

VOTE: Ayes - 3 Nays - 0 Abstain - 1 (Martin)

MOTION: by Councilmember Huffman, seconded by Councilmember Wickstrom to approve the June 20, 2011 City Council Meeting Minutes as submitted.

VOTE: Ayes - 3 Nays - 0 Abstain - 1 (Quigley)

PUBLIC HEARINGS

There were none.

GENERAL BUSINESS

APPROVE PLANS AND SPECIFICATIONS AND ORDER TAKING OF BIDS - 2011 MSA STREET REHABILITATION, CP 11-08

Presentation by Public Works Director Mark Maloney

Approval is requested for the plans and specifications and authorization to advertise for bid for the 2011 MSA street project. This 1.6 mile collector street improvement project was authorized by the Council on April 18, 2011, and includes Tanglewood (Lexington to Hodgson Connection, Victoria (Highway 96 to Tanglewood) and Mound Avenue (Victoria to Larson Road).

The normal crack filling maintenance would not be cost effective for the amount of stress on these streets. Staff recommends a full depth reclamation at an estimated cost of under \$1.5 million with funding through Municipal State Aid (MSA). The plan has been submitted to Mn/DOT and there is preliminary approval, but final approval has not been received. The proposed schedule could be delayed if the state government shutdown is not resolved before the bid award date. Tentatively, the schedule is as follows:

August 9	Bid Date
August 15	Council Award Contract
August 29	Construction start
October 15	Construction complete

Mayor Martin asked if the City would incur any penalties in the bidding process if the shutdown continued. Mr. Maloney responded that the City has 45 days after accepting the bid awards that bidders are required to make good on the bids. No fee penalties are incurred, and an addendum can be added to extend the bid date.

Councilmember Wickstrom asked if it would be possible to move forward with the project before final approval and be reimbursed by MSA once state government is operating. Mr. Maloney answered that MSA will allow acceptance of bids but not the actual award of bids until final approval is given.

MOTION: by Councilmember Huffman, seconded by Councilmember Wickstrom to adopt Resolution No. 11-39 approving plans and specifications for the 2011 MSA Street Rehabilitation, City Project 11-08, and ordering the taking of bids on Tuesday, August 9, 2011, at 10:00 a.m., at the Shoreview City Hall.

VOTE: Ayes - 4 Nays - 0

TEXT AMENDMENT - WIRELESS COMMUNICATIONS

Presentation by Senior Planner Rob Warwick

Staff has been in the process of reviewing permitted locations for wireless facilities, specifically focusing on the I-694 and I-35W corridors for the purpose of increasing available locations for providers. The amendment proposed regulates building mounted wireless facilities, which increases available locations without increasing locations for wireless towers.

Current regulations provide for Telecommunication Overlay District 1 (TOD-1) and Telecommunication Overlay District 2 (TOD-2). Freestanding towers are permitted in these two districts. The amendment would add TOD-3, where building mounted wireless facilities would be permitted but not towers. A map was shown indicating buildings in the City would provide a good location for wireless facilities.

Most revisions needed for the Code would be to distinguish those mounted on towers and those mounted on buildings. Architectural design standards have been adopted to apply to roof and building mounted equipment and that requires integration into the architecture of the buildings.

A public hearing was held by the Planning Commission at the June 28, 2011 meeting. No comments were received in response to the public hearing notice. The Planning Commission recommends approval of the amendment to the Council.

Mayor Martin asked if there are any residential properties in the TOD-3 district. Mr. Warwick responded that the *Shores* is a mixed use building at the corner of Lexington and County Road D.

Councilmember Wickstrom asked for clarification of heights used in the different districts and the maximum height on a building. Mr. Warwick stated that the maximum height on a building

is 10 feet. However, if integrated with architectural features such as a penthouse, the height could be higher. Also, the ordinance refers back to the architectural standards previously adopted that will remain.

Planning Commissioner Solomonson stated that the new district using existing buildings is meant to minimize the number of towers and yet allow more locations to fill in gaps of coverage. The hope is for location in the center of the roof with a minimum 5-foot setback or 2 feet for every 1 foot in height. The Planning Commission approved the amendment on a 6 to 0 vote.

MOTION: by Commissioner Huffman, seconded by Councilmember Wickstrom to adopt Ordinance No. 879 revising Chapter 200 of the Municipal Code by amending regulations for the wireless facilities and permitted locations for these facilities and to authorize publication of an ordinance summary. This approval is based on a finding that the proposed amendment strengthen the said regulations for wireless communication facilities in order to maintain established community aesthetic standards.

Discussion:

Councilmember Quigley stated that with 86% migration to use of wireless communication, it is prudent to take this action.

Mayor Martin agreed and expressed her appreciation for the work done by the Planning Commission.

ROLL CALL: Ayes: Huffman, Quigley, Wickstrom, Martin
Nays: None

TEXT AMENDMENT - VARIANCES

Presentation by Senior Planner Rob Warwick

This amendment to the Development Code is to reflect new State standards regarding variances separate from performance standards. Land, building use or any administrative procedure is not included. The current criteria for review of variances is based on “undue hardship.” The proposed amendment replaces “undue hardship” with “practical difficulties.” A variance may be granted if: 1) the owner proposes to use the property in a reasonable manner; 2) there are unique circumstances not created by the property owner; and 3) approval does not alter the character of the neighborhood. The chapters under which a variance may be granted are identified.

The Planning Commission held a public hearing and reviewed the amendment at the June 28, 2011 meeting. No public comment was received. The amendment was recommended to the City Council for passage on a 6 to 0 vote. Staff is recommending approval and authorization to publish an ordinance summary.

Mayor Martin asked for public comment.

Mr. Michael Cashman stated that he is appearing on behalf of Richard and Deirdre Hagstrom at 376 North Owasso Boulevard. The Hagstroms have concerns about the proposed ordinance and have submitted a letter to Councilmembers. He requested that the letter be made part of these proceedings. The City need not go to the full extent of authority that may be authorized by state statute. The statute is an enabling provision and most land owners comply with the ordinances as written. Variances are an exception. Paragraph A of the proposed amendment should be stricken to limit variances to be considered on an individualized basis. If reasonable use can be achieved through a single variance, that is the extent that any variances should be allowed. He would like to see the ordinance written with additional clarity to avoid disputes and potential litigation. Paragraph A.2.a. states, “The property owner proposes to use the property in a reasonable manner.” He suggested the word “objectively” be inserted before the word “reasonable.” A variance should not be based on the subjective views of the property owner but based on objective criteria. In paragraph C.2.b., he suggested that “or predecessor” be added to the end of the sentence after “property owner” because unique circumstances should not be created by the property owner but also the predecessor, so that a purchaser would be aware of the circumstances. The word “circumstances” is unclear and does not include the size and shape of a lot. He would suggest using “topographical or physical conditions” instead to provide more guidance. Also, an additional provision is suggested, C.7., which would state, “Practical difficulties for any additional variance do not exist when a single variance may provide an objectively reasonable use of the property.”

Mayor Martin stated that all Councilmembers received the letter with these suggestions.

Councilmember Quigley stated that with the Council’s and League of Minnesota’s review, he believes the draft proposed is adequate.

Planning Commissioner Solomonson stated that the Planning Commission discussed this amendment extensively. The language is based on a Supreme Court decision and was guided by legal counsel.

Mr. Schwerm added that the League of Minnesota Cities worked hard to develop this language and amends the ordinance to best comply with the practice that has been used for at least the last 25 years.

Councilmember Wickstrom asked if, as she has understood, that unique circumstances are not created by the property owner or predecessor. City Attorney Filla stated that the change in paragraph 070.A was made because property owners often apply for more than one variance. They are ruled on individually and need to be justified by the standards. That is what is done. In paragraph 070.C.2a, he does not believe “objectively reasonable” is any more definitive than just “reasonable.” It is a determination to be made in the context of the standards. Circumstances are not limited to geography. Case law indicates that a person who buys property knowing that a variance is required is not precluded from requesting a variance. The proposed ordinance

implements the most recent changes in state law and adopts practices that cities have been using for many years.

Councilmember Wickstrom noted that blockage of sunlight is considered a “practical difficulty.” She asked how a situation would be handled if someone has a solar panel and a neighbor makes a proposal that would shade it. City Attorney Filla stated that the Council would take that into consideration.

Mr. Cashman stated that a very important issue is the language in paragraph A that states, “The application for a variance or variances, herein collectively variance...”. This language creates confusion and potential ambiguity for potential disputes and litigation. He believes his suggestion to add paragraph C7 is the best solution. The way the ordinance is proposed, it is not clear that only one variance to relieve “practical difficulties” is allowed. What is practiced may not be apparent to future Councilmembers or Planning Commission members.

Mayor Martin responded that variances in Shoreview are reviewed individually and independently. Mr. Cashman’s language adds another level of complexity when it is the City’s practice to consider variances individually.

Mr. Cashman stated that in Section C(2), the words “or predecessor” should be added to make clear that there are no unique circumstances because the property owner is aware of the property circumstances at the time of purchase. City Attorney Filla stated that if a predecessor created a need for a variance, the property owner has the right to apply for a variance, although it may not be granted, unless it meets the criteria standards. Any consideration by a court will look to see if the City acted within a reasonable manner under its code. He does not understand how “reasonable” can be made to be objective. The language used is direct from state law. He would not want a property owner to think he/she cannot apply for more than one variance. The only real change is to Section C(2)(a) where “area” is used instead of “neighborhood” to state that there is no change in unique circumstances or area character in the new law.

MOTION: by Councilmember Wickstrom, seconded by Councilmember Huffman to adopt Ordinance 880 revising Chapter 200 of the Municipal Code pertaining to Section 203.070 variances and to authorize publication of an ordinance summary. The Ordinance is consistent with the recent changes in state law regarding variances.

Discussion:

Councilmember Wickstrom noted that if there are problems, this matter can be revisited.

ROLL CALL: Ayes: Quigley, Wickstrom, Huffman, Martin
Nays: None

WEED ABATEMENT HEARINGS

910 County Road E

354 Sherwood Road

Presentation by Senior Planner Rob Warwick

The above listed two properties were given the required notice for weed abatement proceedings. Both properties are in foreclosure. Both properties have vegetation exceeding 9 inches in height. As of this date, the property at 910 County Road E has been mowed. The approval requested is for abatement at 354 Sherwood Road and monitoring of 910 County Road E during this and the next growing season. Further abatement will not occur without giving notice again.

MOTION: by Councilmember Wickstrom, seconded by Councilmember Quigley to adopt Resolution No. 11-38 pursuant to Section 210.020A approving the abatement of vegetative growth for the properties located at 910 County Road E and 354 Sherwood Road and charge the property owners the charge for the abatement including administrative costs. The City Manager is authorized to monitor the properties throughout the 2011 and 2012 growing seasons and to abate vegetative growth on the property that does not comply with City regulation.

Discussion:

Mayor Martin opened discussion to public comments. There were none.

ROLL CALL: Ayes: Wickstrom, Huffman, Quigley, Martin
Nays: None

ADJOURNMENT

MOTION: by Councilmember Huffman, to adjourn the meeting at 8:20 p.m.

VOTE: Ayes - 4 Nays - 0

Mayor Martin declared the meeting adjourned.

THESE MINUTES APPROVED BY COUNCIL ON THE 1st DAY OF AUGUST 2011.

Terry C. Schwerm
City Manager